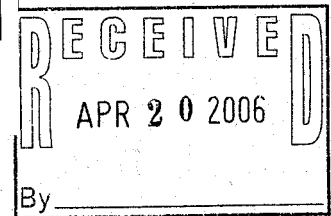


ORIGINAL



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

RT-00000J-02-0066

April 20, 2006

Brian McNeil  
Executive Director  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007-2927

AZ CORP COMMISSION  
DOCUMENT CONTROL

2006 MAY 11 P 1:07

RECEIVED

Re: AGR05-010; A.A.C. R14-2-2102 through 2112;  
Consumer Proprietary Network Information

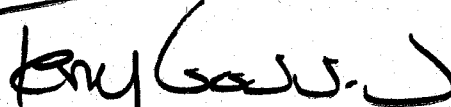
Dear Mr. McNeil,

The Attorney General's Office has reviewed the above referenced rule and the materials submitted by the Corporation Commission and the industry that will be regulated by the rules. We note that the Arizona legislature has specifically authorized the Corporation Commission to adopt rules that protect the privacy of Arizona citizens. A.R.S. § 40-202. While we are aware of the federal case law addressing the constitutionality of other consumer proprietary network information regulatory schemes, we realize that a similar analysis has not examined the exact regulatory framework adopted by the Commission. In deciding whether to approve a final rule, the Attorney General is statutorily required to determine whether the rule is in proper form, is clear, concise and understandable, within the power of the agency to adopt and was made in compliance with appropriate procedures. A.R.S. §41-1044. In this instance, where certain constitutional questions may surround one or more provisions of the rule, the Attorney General must be careful not to presuppose how a court may rule on a particular issue. Therefore, we have relied on the expertise of the Commission in implementing A.R.S. § 40-202 and in exercising its discretion in adopting the rules. We presume that the Commission has established a system of regulation that does not violate the constitutional rights of the regulated industry.

We have otherwise determined that the rule is in proper form, is clear, concise and understandable, within the power of the agency to adopt and was adopted in compliance with appropriate procedures.

Accordingly, pursuant to A.R.S. § 41-1044, I have affixed my signature to the original Approval of Final Rules and have forwarded it together with the original rule, notice of final rulemaking, and economic, small business, and consumer impact statement and four copies of each to the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Goddard", with a stylized flourish at the end.

Terry Goddard  
Attorney General

c: Maureen Scott

AGENCY RECEIPT

NOTICE OF FINAL RULEMAKING

SECRETARY OF STATE

2006 APR 20 PM 2:19

1. Agency name: Arizona Corporation Commission

FILED

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

<u>Subchapters, Articles, Parts, and Sections</u>	<u>Action</u>
Article 21. Customer Proprietary Network Information	
R14-2-2101	New
R14-2-2102	New
R14-2-2103	New
R14-2-2104	New
R14-2-2105	New
R14-2-2106	New
R14-2-2107	New
R14-2-2108	New
R14-2-2109	New
R14-2-2110	New
R14-2-2111	New
R14-2-2112	New

SECRETARY OF STATE

**ATTORNEY GENERAL APPROVAL OF FINAL RULES**

2006 APR 20 PM 2:19

**FILED**

1. **Agency Name:** Arizona Corporation Commission
2. **Chapter Heading:** Chapter 2. Corporation Commission – Fixed Utilities
3. **Code Citation for the Chapter:** A.A.C. R14-2-2101 through 2112
4. **The Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

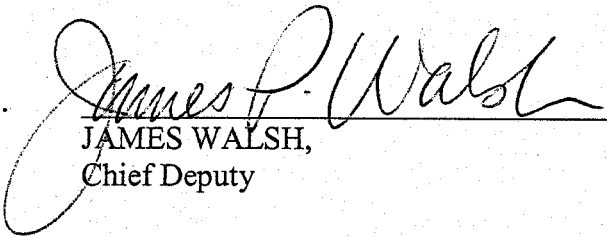
**Sections**

**Action**

Article 21. Customer Proprietary Network Information

R14-2-2101	New
R14-2-2102	New
R14-2-2103	New
R14-2-2104	New
R14-2-2105	New
R14-2-2106	New
R14-2-2107	New
R14-2-2108	New
R14-2-2109	New
R14-2-2110	New
R14-2-2111	New
R14-2-2112	New

5. The rules contained in this package are approved as final rules pursuant to A.R.S. § 41-1044.

6.  4/18/06  
JAMES WALSH, Date  
Chief Deputy

AGENCY CERTIFICATE

SECRETARY OF STATE

2006 APR 20 PM 2:19

Notice of Final Rulemaking

FILED


1. Agency name: Arizona Corporation Commission
2. Chapter heading: Chapter 2. Corporation Commission – Fixed Utilities
3. Code citation for the Chapter: A.A.C. R14-2-2101 through 2112
4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

Subchapters, Articles, Parts, and Sections	Action:
--	---------

Article 21. Customer Proprietary Network Information

R14-2-2101	New
R14-2-2102	New
R14-2-2103	New
R14-2-2104	New
R14-2-2105	New
R14-2-2106	New
R14-2-2107	New
R14-2-2108	New
R14-2-2109	New
R14-2-2110	New
R14-2-2111	New
R14-2-2112	New

5. The rules contained in this package are true and correct as adopted.

6.   
Signature of Agency Chief Executive Officer

3/22/06  
Date of signing

Michael P. Kearns  
Printed or typed name of signer

Director/Deputy Executive Director  
Title of signer

NOTICE OF FINAL RULEMAKING

SECRETARY OF STATE

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND

2006 APR 20 PM 2:19

ASSOCIATIONS; SECURITIES REGULATION

FILED

CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R14-2-2101	New
R14-2-2102	New
R14-2-2103	New
R14-2-2104	New
R14-2-2105	New
R14-2-2106	New
R14-2-2107	New
R14-2-2108	New
R14-2-2109	New
R14-2-2110	New
R14-2-2111	New
R14-2-2112	New

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: Arizona Constitution, Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, and 40-322.

Implementing statute: Not applicable

**3. The effective date of the rules:**

The Commission approved these rules at an open meeting on November 8, 2005. These rules were promulgated to protect the constitutionally mandated privacy of Arizona citizens. Under A.R.S. §§ 41-1044 AND 41-1057 these rules had to be submitted to the Office of the Attorney General for approval. Therefore, pursuant to A.R.S. § 41-1032, the effective date of these rules is 60 days after a certified original and two copies of the rules and preamble are filed in the office of the Secretary of State and the time and date are affixed as provided in A.R.S. § 41-1031.

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 4702, November 19, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 4732 November 26, 2004

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Maureen A. Scott, Senior Staff Counsel, Legal Division

Address: Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007



Telephone Number: (602) 542-3402

Fax Number: (602) 542-4870

E-mail Address: mscott@azcc.gov

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

The rules regulate dissemination of individual Customer Proprietary Network Information (CPNI) by telecommunications carriers. Telecommunication carriers are in a position to collect customers' private account and personal calling information. This information is sensitive and the collection and dissemination by service providers raises serious privacy issues. The Commission believes these rules are necessary to provide adequate notice to make an informed decision and sufficient protection to safeguard the privacy interests of Arizona citizens.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

The Commission believes that the rules are necessary to protect consumers' privacy rights. These rules will insure appropriate authorization and dissemination measures are

taken and will enhance public safety, quality of service and are in the best interest of all citizens in the state of Arizona.

**9. The summary of the economic, small business, and consumer impact:**

Telecommunications carriers, as defined in rule R14-2-2102(A)(12), may incur costs associated with consumer notification requirements, annual reminders and confirmation of customers' CPNI elections, and additional verification procedures. Carriers that fail to comply with the rules may face penalties or sanctions. The rules may lead to more efficient use of the CPNI as a result of knowing and informed consent by consumers. Telecommunications carriers may also benefit from a decrease in consumer complaints and increased goodwill as a result of the rules. Most telecommunications carriers are not small businesses as defined by A.R.S. § 41-1001.19. Telecommunications carriers that are small businesses must comply with the rules when enacted. The Commission has tried to reduce the impact on small business by creating rules which are deemed to be the least intrusive and least costly means of achieving the whole purpose of the rulemaking. Consumers and small businesses that are not telecommunications carriers will benefit from important safeguards set forth to ensure that customers are routinely informed of their rights with respect to Customer Proprietary Network Information and that the decision to release this private information is both knowing and informed.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Some clarifying language has been incorporated into the following sections in response to

the comments of the carriers and the Arizona Attorney General. The clarifying modifications do not substantially change the rules as published in the *Register*, therefore no supplemental rulemaking is required.

**R14-2-2103(A)(1)**

Staff addressed Arizona Wireless Carriers, MCI and Sprint carrier concerns regarding specific reference to "Total Services Approach" and modified this section for clarity.

**Before:**

- A. A telecommunications carrier may, subject to opt-out approval or opt-in approval:
1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;

**After:**

- A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:
1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already subscribe to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;

**R14-2-2105(A)(1)**

AT&T and Citizens raised issue of clarify for customers understanding of complex definitions. MCI and Sprint concurred. Staff agreed that the regulatory definition of CPNI may cause confusion to customers and proposed the following clarification language.

**Before:**

A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:

1. Include the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

**After:**

A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:

1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

**11. A summary of the comments made regarding the rule and the agency response to them:**

**R14-2-2101. Application of the Rule**

**Issue:** Qwest and Arizona Wireless Carriers contended, and MCI and Sprint concurred, that the rules should apply only to intrastate CPNI. Qwest argued that the Federal Communications Commission's ("FCC") Third Report and Order (FCC 02-214 Rel. July 25, 2002) ("FCC Order") preempts Staff's CPNI rules.

Staff contended that the rules apply to all CPNI gathered by telecommunications carriers that provide telecommunications service in Arizona. Staff stated that the Arizona rules incorporate the FCC rules, going beyond them in certain instances. Staff further noted that the FCC's Order allows states to go beyond federal standards for purposes of the release of CPNI in a particular state; therefore, the Arizona rules apply to all CPNI released in Arizona.

**Analysis:** The rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customers' concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of

their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules were narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules will place on the carriers.

**Resolution:** No change was necessary.

**R14-2-2102. Definitions**

**R14-2-2102(10)**

**Issue:** AT&T stated its understanding that telephone numbers are considered published unless the customer specifically requests that the telephone number not be published; thereby the authorization to publish is implied. AT&T was concerned that defining "published" as "authorized for voluntary disclosure by the individual identified in the listing" creates a substantive requirement that carriers seek express authorization in order to publish a customer's telephone number in directories.

**Analysis:** The term "published" appears only once outside of the definitions section. Specifically, R14-2-2105(A) provides that "A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The

contents of any such notification must: 5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use.” This rule is consistent with the practice of implied authorization to publish and establishes no substantive duty on the carriers.

**Resolution:** No change was required.

**R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services**

**R14-2-2103(A)(1)**

**Issue:** Citizens stated that Staff’s rules require opt-in or opt-out for marketing any telecommunications related services to a particular customer and contended that this conflicts with the FCC rules.

**Analysis:** See discussion of R14-2-2101, above.

**Resolution:** No change was necessary.

**R14-2-2103(D)**

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Citizens and Verizon objected to the requirement that carriers execute a proprietary agreement with any entity with whom the carrier shares CPNI. This requirement applies to affiliates that provide communications-related services. Carriers took the position that carrier affiliates share an interest in maintaining the customer relationship, and therefore misuse of CPNI by

affiliates is not likely. These carriers further objected because Staff's rules require a proprietary agreement with joint ventures, independent contractors and affiliates, where the FCC rules require a confidentiality agreement only with the first two types of entities, and not with affiliates.

Staff stated that the carriers' assurances regarding affiliates' interest in maintaining the customer relationship is insufficient to ensure the protection of CPNI. Therefore, Staff stated, to the extent that affiliates providing telecommunications services do not fall under the jurisdiction of the Corporation Commission, proprietary agreements are necessary to ensure that the CPNI disseminated to those entities remains confidential.

**Analysis:** It is axiomatic that CPNI is sensitive personal information. The Commission took the position that CPNI is sufficiently important to warrant the security of such proprietary agreements to ensure that customers' information is protected.

**Resolution:** No change was necessary.

**Issue:** Arizona Wireless Carriers, MCI and Sprint noted that the Total Services Approach was not explicitly set forth in the rules, and stated that the rules contradict the Total Services Approach because it requires opt-out or opt-in approval for the purpose of marketing communications-related services to a customer.

Staff stated its intention to use the Total Services Approach, and addressed this concern by recommending the following italicized language be added to R14-2-2103(A)(1);

A telecommunications carrier may, subject to opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI,



for the purpose of marketing *to that customer* communications-related services *of a category to which the customer does not already subscribe to that customer*, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

An additional clarification was made to prevent confusion regarding when a telecommunications carrier may disclose CPNI subject to this rule. This clarification was addressed with the following italicized language added to R14-2-2103(A)(1):

A telecommunications carrier may, subject to *obtaining* opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

**Analysis:** The Commission agreed with Staff. It believed that the clarifying language describing when CPNI may be disseminated was appropriate.

**Resolution:** The Commission adopted the changes set forth above in order to ensure that Arizona permits carriers to use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings to its customers among the categories of service to which a customer already subscribes and to require opt-in or opt-out approval to provide or market service offerings to customers among the categories of service to which the customer does not already subscribe.

**R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services**

**R14-2-2104(D)**

**Issue:** MCI and Sprint concurred with Qwest's objection to the requirement that carriers secure express written customer consent before CPNI may be transferred to unaffiliated third parties.

**Analysis:** To the extent that third parties and affiliates that do not provide telecommunications services do not fall under the jurisdiction of the Corporation Commission, written consent is necessary to ensure that the CPNI disseminated to those entities remains confidential. The Commission believed that requiring express written customer consent prior to transferring CPNI to unaffiliated third parties and affiliates that do not provide communications-related services is a reasonable method to ensure protection of that sensitive customer information.

**Resolution:** No change was necessary.

**R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice**

**R14-2-2105(A)(1)**

**Issue:** AT&T and Citizens stated, and MCI and Sprint concurred, that the requirement that the notice contain the definition of CPNI contained in Section 222 of the Act would result in confusion for the customer. The carriers stated that the FCC requirement that the notification specify the type of information that constitutes CPNI permits the telecommunications carrier flexibility and aids in reader comprehension.

Staff agreed that the regulatory definition of CPNI may cause confusion to customers; therefore Staff recommended that the following italicized language be added to R14-2-2105(A)(1):

A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 1. Include *language the same as or substantially similar to* the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**Analysis:** Legal terminology may be overly complex and difficult to understand for the customer.

**Resolution:** The Commission agreed with and adopted Staff's recommended changes as set forth above to ensure that customers will receive an accurate but straightforward explanation of CPNI notice.

**R14-2-2105(A)(4)**

**Issue:** MCI and Sprint joined in Qwest's contention that the requirement that the notice inform the customer that CPNI includes "all information related to specific calls initiated

or received by a customer” misstates existing law.

**Analysis:** CPNI is defined at 47 USC § 222(h)(1)(A) and (B), revised 1999, and at rule R14-2-2102(5), as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

R14-2-2105(A)(1) requires that customers are given notice of what information makes up CPNI with a more detailed statement. Although R14-2-2105(A)(4) does not state the definition verbatim, it does not misstate the existing definition in 47 USC § 222(h)(1)(A) and (B), revised in 1999.

**Resolution:** No change was necessary.

#### **R14-2-2105(A)(6)**

**Issue:** MCI and Sprint concurred in Qwest’s objection to the language of this rule. Qwest preferred language such as that of the federal rules, that “[c]arriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.” 47 C.F.R. § 64.2008(c)(3).

**Analysis:** The language of Staff’s rule requires that notification to obtain opt-in

approval must “[i]nform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes.” Carriers preferred the broader language they proffered; however, they failed to convince the Commission that their proposed language has a significant benefit versus Staff’s language. The language proposed by the carriers allows for potential advisement of any consequence, relevant or not, that may result from lack of access to CPNI. Because CPNI is a sensitive and highly touted commodity, the Commission did not wish to inadvertently authorize carriers to provide disincentives for customers who choose not to opt-in or who choose to opt-out. Therefore, the Commission preferred Staff’s language.

**Resolution:** No change was necessary.

#### **R14-2-2105(B)(1)**

**Issue:** Sprint, MCI and Citizens objected to the requirements of this section, R14-2-2105(B)(2), and R14-2-2105(C)(2) that written notices be mailed separately or as a bill insert within a clearly marked envelope, and that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC’s rules.

Staff contended that written and electronic notices sent to customers to obtain opt-in or opt-out approval must be clear and easy for customers to read. After consideration of industry comments on Staff’s Second Draft Rules, Staff amended R14-2-2105(B)(1) to allow carriers to include written notices within customer bills. Staff maintained that if written notice is included as a bill insert, the envelopes should be clearly marked to

inform customers that important privacy information is enclosed. Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that minimum requirements governing content and format of written or electronic notices ensure that customers have the opportunity to make informed decisions as to the dissemination of their CPNI.

**Analysis:** The Commission agreed with Staff.

**Resolution:** No change was necessary.

#### **R14-2-2105(B)(2)**

**Issue:** Qwest, Citizens, MCI and Sprint objected to the requirement of this section that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rule.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

**Resolution:** No change was necessary.

#### **R14-2-2105(B)(3)**

**Issue:** Citizens, MCI and Sprint stated that the requirements of this section and R14-2-2105(C)(3) to print written or electronic notice in both English and Spanish unless the customer has previously expressed a preferred language is too inflexible. Citizens noted that the FCC rules authorize carriers to translate written or electronic notices into a language appropriate to the specific customer, which may not be Spanish.

Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that R14-2-2105(B)(3) and R14-2-2105(C)(3) afford the flexibility desired by carriers by providing for a previously-established preferred language of a customer without specifying that this language must be English or Spanish.

**Analysis:** Both English and Spanish are languages spoken with great frequency in Arizona. The requirement that notices be provided in both languages to customers is an appropriate baseline for the communities of Arizona to ensure understanding, and yet allows for customers whose primary language may be other than English or Spanish to request notice in their own language.

**Resolution:** No change was necessary.

#### **R14-2-2105(C)(2)**

**Issue:** Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

**Resolution:** No change was necessary.

#### **R14-2-2105(C)(3)**

**Issue:** Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in both English and Spanish unless the customer has

previously expressed a preferred language in which case the notice may be written in that language alone. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(3).

**Resolution:** No change was necessary.

**R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI**

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Cox Arizona Telecom and Citizens objected to this section, claiming that it is an unconstitutional restriction on free speech.

Staff acknowledged that cases cited by the carriers have found that an opt-in approval process prior to the release of CPNI is unconstitutional in some cases. However, Staff stated that the rules are consistent with the FCC rules with respect to the approval mechanism required for release of a customer's CPNI. Staff noted that this section adds a verification requirement, which has not been the subject of judicial review. The rule gives carriers one year to verify a customer's CPNI release election and allows carriers to request additional time if verification is not accomplished within a year.

**Analysis:** The United States Supreme Court established a four-prong test on the constitutionality of regulating commercial speech in the matter of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980). First it must be determined whether the expression in question is protected by the First Amendment; in this, a case of commercial speech, the expression must concern lawful activity and not be



misleading, and second; whether the asserted governmental interest in regulating the commercial speech is substantial. If the answer to the first two prongs is affirmative, the third consideration is whether the regulation directly advances the governmental interest asserted, and, fourth, it must be determined whether the regulation is narrowly tailored to serve that interest. *Id.* at 566.

Carriers and Staff disagreed whether the proposed CPNI rules infringe on carriers' First Amendment rights. Carriers asserted that the restriction on the use of CPNI is an infringement on their right to commercial speech and cited to *U.S. West v. the Federal Comm. Comm'n*, 182 F.3d 1224 (10<sup>th</sup> Cir. 1999). Staff argued that the CPNI restrictions amount only to regulation of carriers' methods of collecting and using CPNI, which Staff asserted does not limit carriers' communication or expressive activities toward a willing audience.

To the extent that the rules implicate First Amendment issues relating to carriers' abilities to communicate customer CPNI with affiliates or other third parties, The Commission agreed that they are engaging in commercial speech that is lawful and is not misleading. The Commission also believed that the dissemination of CPNI by a regulated entity implicates a substantial government interest in protecting the rights of ratepayers to control that dissemination.

Subscribing to some form of telecommunications service is inevitable in all but the narrowest of circumstances. What telecommunications carriers do with the CPNI of

these customers, a valuable yet sensitive commodity, is then out of customers' control except through market influence and state regulation. Staff's CPNI rules amount to time, place, and manner restrictions. Staff cited several national consumer surveys by Harris Interactive showing that customers are concerned that "companies they patronize will provide their information to other companies without [their] permission" (Staff's Response Comments, filed Jan. 19, 2005, at 9 (citations omitted)) and that customers are taking responsibility for protecting their own privacy.

In this case, the CPNI rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customer's concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules are narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules place on the carriers.

**Resolution:** In response to comments received from the Arizona Attorney General's Office, the Commission added standards for carriers to receive an extension of time under R14-2-2108(g) of the rules. This change is a nonsubstantial change since the Commission is merely clarifying an existing rule. The standards the Commission added are as follows:

- I. The Commission may grant an extension(s) of time to complete the verification process if the applicant demonstrates items 1 through 4 below:
  1. The applicant has used its best efforts to obtain customer verification of their CPNI sharing preference. One means of demonstrating this would be for the applicant to show that it has achieved verification with respect to a minimum of one-third of its customers during the initial or extension period for which the company used the opt-out approval mechanism; and
  2. The applicant has contacted each of its customers (for whom it has used an opt-out approval mechanism) at least once in the first half of the verification period and at least once during the second half of the verification period (if it was unsuccessful in obtaining the customer's verification during its initial contact) to verify the customer's CPNI sharing preference; and

3. To the extent practicable, one of the applicant's contacts to the customer should be by phone to the customer's primary residence or telephone number by a person speaking the customer's language preference (English or Spanish). If the customer is not there, it should allow, if technically feasible, the customer the option of responding via message return; and
4. The applicant presents a plan for achieving verification for its remaining customers. In its plan, the applicant must demonstrate that the additional time it is requesting is no longer than is reasonably necessary to complete items 1 and 3 again for any customers it was unsuccessful in contacting during the initial verification period, and to complete any additional measures designed to ensure customer contact during the extension period.

**R14-2-2109. Confirming a Customer's Opt-In Approval**

**Issue:** Qwest, MCI and Sprint objected to the requirement that carriers provide a customer written confirmation within ten days of receiving that customer's opt-in approval. The written confirmation must be mailed or e-mailed separately, and carriers state that this requirement is unnecessary, burdensome and costly.

Staff stated that a customer's opt-in approval allows a carrier to use, disclose, or permit access to that customer's CPNI to third parties and affiliates that do not provide communications-related services, and which thereby do not fall under the jurisdiction of the Corporation Commission. Staff stated that a customer should have the opportunity to notify the carrier in the event that the customer's opt-in approval was unintended or erroneous.

**Analysis:** The Commission agreed with Staff that this requirement is necessary and find that the benefit of protecting a customer's choice on use of CPNI outweighs the burden and cost of the confirmation process.

**Resolution:** No change was necessary.

**R14-2-2110. Reminders to Customers of Their Current CPNI Release Election**

**Issue:** Qwest, MCI and Sprint objected to the requirement that carriers provide annual reminders to customers that have given opt-in or opt-out approval of their election regarding CPNI. The annual reminders must be mailed or e-mailed separately from the customer's bill and advertising or promotional information. Carriers argued that this requirement is unnecessary, burdensome and costly.

Staff stated that customers should be kept informed of their elections regarding the treatment of the CPNI, and annual reminders ensure that customers' ongoing approval continues to be knowing and informed.

**Analysis:** The Commission agreed with Staff. Customers may subscribe to services from more than one company. The annual reminder affords customers the opportunity to revise their CPNI election if they choose.

**Resolution:** No change was necessary.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

The Commission incorporates United States Code of Federal Regulations, Title 47, subparts 64.2001 through 2009 inclusive (revised September 20, 2002 and no future amendments) in subsection R14-2-2101. In accordance with A.R.S. §41-1028, an agency may incorporate code regulations without publishing the incorporated matter in full as it would be unduly cumbersome, expensive or otherwise inexpedient.

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND  
ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES**

**ARTICLE 21. CUSTOMER PROPRIETARY NETWORK INFORMATION**

Section

- R14-2-2101. Application of the Rule
- R14-2-2102. Definitions
- R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to  
Affiliates, Joint Venture Partners, and/or Independent Contractors Providing  
Communications-Related Services
- R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to  
Third Parties and Affiliates that Do Not Provide Communications-Related  
Services
- R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice
- R14-2-2106. Additional Informational Requirements for Customer Opt-Out Notice
- R14-2-2107. Notification Requirements for Obtaining Customer Approval for Limited One-  
Time Use of CPNI for Inbound and Outbound Customer Telephone Contact
- R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI
- R14-2-2109. Confirming a Customer's Opt-In Approval
- R14-2-2110. Reminders to Customers of Their Current CPNI Release Election
- R14-2-2111. Duration of Customer Approval or Disapproval to Disseminate the Customer's  
CPNI
- R14-2-2112. Severability

## **ARTICLE 21. CUSTOMER PROPRIETARY NETWORK INFORMATION**

### **R14-2-2101. Application of the Rule**

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications carriers that provide telecommunications service in Arizona. In addition, the Commission adopts, incorporates, and approves as its own 47 CFR § 64.2001 through 2009, revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975. These rules are in addition to the FCC rules and together with the FCC rules govern the release of CPNI in Arizona.

### **R14-2-2102. Definitions**

For purposes of this Article, the following definitions apply unless the context otherwise requires:

1. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
2. "Communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.
3. A "Customer" of a telecommunications carrier is a person or entity to which the



telecommunications carrier is currently providing service.

4. "Customer premise equipment" means equipment employed on the premises of a person (other than a telecommunications carrier) to originate, route, or terminate telecommunications.
5. "Customer proprietary network information (CPNI)" means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. See 47 U.S.C. § 222(h)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
6. "Non-listed Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory but are available through directory assistance.
7. "Non-published Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory and are not otherwise available through directory assistance.
8. "Opt-In approval" means a method for obtaining customer consent to use,

disclose, or permit access to the customer's CPNI that requires that the telecommunications carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided notification of the carrier's request in conformance with section R14-2-2105.

9. "Opt-Out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI where a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to affirmatively object to approval within the 30-day waiting period provided in R14-2-2103(C) after the customer is provided the notice as required in R14-2-2106, subject to the requirements of section R14-2-2108.
10. "Published" means authorized for voluntary disclosure by the individual identified in the listing.
11. "Subscriber list information" means any information identifying the listed names of subscribers of a telecommunications carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. See 47 U.S.C. § 222(e)(1) revised 1999 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M,

Pittsburgh, Pennsylvania 15250-7975.

12. "Telecommunications carrier" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
13. "Third Party" means a person who is not the customer, the customer's telecommunications service provider, an affiliate, joint venture partner, or independent contractor of the customer's telecommunications service provider.

**R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners and/or Independent Contractors Providing Communications-Related Services**

- A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:
  1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already subscribe, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;
  2. Permit such persons or entities to obtain access to such CPNI for such purposes.
- B. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the

requirements of Section R14-2-2105 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-2106 of these rules.

- C. Telecommunications carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose or permit access to CPNI. A telecommunications carrier may, in its discretion, provide for a longer period.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services**

- A. A telecommunications carrier may, subject to opt-in approval, use, disclose, or permit access to its customer's individually identifiable CPNI to affiliates that do not provide telecommunications-related services.
- B. A telecommunications carrier may use, disclose, or permit access to its customer's

individually identifiable CPNI to a third party only upon written, electronic, or oral request by the customer that specifically identifies the third party to whom the CPNI may be disseminated.

- C. Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-2105 of these rules.
- D. The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- E. A telecommunications company relying on "Opt-In" approval must bear the burden of demonstrating that such approval has been given in compliance with sections R14-2-2104 and R14-2-2105 of these rules.
- F. This article does not prohibit the use and disclosure of CPNI for the purpose of sharing customer records necessary for the provisioning of service by a competitive carrier as provided in section 222(c)(1) of the Communications Act of 1934, as amended (and no future amendments), incorporated by reference and copies available from the

Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice**

- A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:
1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;
  2. State that the customer has a right to direct the company not to use the customer's CPNI or limit the use, disclosure, and access to the customer's CPNI;
  3. State that the telecommunications company has a duty to comply with the customer's limitations on use, disclosure of, and access to the information;
  4. State that CPNI includes all information related to specific calls initiated or received by a customer;
  5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use;

6. Inform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes;
7. State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
8. Be posted on the company's web site.

**B. Written notice must:**

1. Be mailed separately or be included as an insert in a regular monthly bill within an envelope that clearly and boldly states that important privacy information is contained therein;
2. Be clearly legible, in twelve-point or larger print;
3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.

**C. Electronic notice must:**

1. Be e-mailed separately from any billing information, inducements, advertising, or promotional information;
2. Be clearly legible, in twelve-point or larger print;
3. Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.

**R14-2-2106. Additional Information Requirements for Customer Opt-Out Notice**

- A.** A telecommunications carrier may provide notification to obtain opt-out approval

through, written, or electronic methods, but not orally (except as provided in section R14-2-2107).

- B. The contents of any such notification must comply with section R14-2-2105 and with the following requirements.
- C. Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-2103(C)) for a response before opt-out approval is assumed.

**R14-2-2107. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact**

A telecommunications carrier may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications carriers use opt-out or opt-in approval based on the nature of the contact.

**R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI**

- A. Verification of a customer's opt-out approval must be obtained within one year. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below. Carriers may request an extension of the verification time period subject to Commission approval.
- B. Verification of the customer's approval may be obtained through written, oral, or electronic methods. All verification methods shall be conducted in the same languages that were used in the initial notification and shall elicit at a minimum:



1. The identity of the customer;
2. Confirmation that the person responding to the verification request is authorized to make CPNI available to the telecommunications company;
3. Confirmation that the customer wants to make the CPNI release verification;
4. The telephone numbers for which CPNI information release is authorized; and
5. The types of service involved.

**C.** Written verification obtained by a telecommunications carrier shall:

1. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article;
2. Be signed and dated by the customer authorizing the use of the customer's CPNI; and
3. Not be combined with any inducement.

**D.** Electronic verification obtained by a telecommunications carrier shall:

1. Include electronically signed letters of authority;
2. Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article; and
3. Not be combined with any inducement.

**E.** Oral verification obtained by a telecommunications carrier shall:

1. Be recorded; and
2. Not be combined with any inducement.

**F.** If a telecommunications company fails to obtain verification within one year of obtaining

a customer's opt-out approval, the authorization to use, disclose, or permit access to that customer's CPNI is no longer valid. If verification from the customer is not received within one year as required, the company shall direct any entities (affiliates, joint-venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI.

- G. As a result of failure to obtain verification within one year, the company and any other entities (affiliates, joint-venture partners, or independent contractors) may not use, disclose, or permit access to that customer's CPNI until verification is obtained.
- H. Carriers may request an extension of the verification time period subject to Commission approval.
- I. The Commission may grant an extension(s) of time to complete the verification process if the applicant demonstrates items 1 through 4 below:
  - 1. The applicant has used its best efforts to obtain customer verification of their CPNI sharing preference. One means of demonstrating this would be for the applicant to show that it has achieved verification with respect to a minimum of one-third of its customers during the initial or extension period for which the company used the opt-out approval mechanism; and
  - 2. The applicant has contacted each of its customers (for whom it has used an opt-out approval mechanism) at least once in the first half of the verification period and at least once during the second half of the verification period (if it was unsuccessful in obtaining the customer's verification during its initial contact) to verify the customer's CPNI sharing preference; and
  - 3. To the extent practicable, one of the applicant's contacts to the customer should

be by phone to the customer's primary residence or telephone number by a person speaking the customer's language preference (English or Spanish). If the customer is not there, it should allow, if technically feasible, the customer the option of responding via message return; and

4. The applicant presents a plan for achieving verification for its remaining customers. In its plan, the applicant must demonstrate that the additional time it is requesting is no longer than is reasonably necessary to complete items 1 and 3 again for any customers it was unsuccessful in contacting during the initial verification period, and to complete any additional measures designed to ensure customer contact during the extension period.

**R14-2-2109. Confirming a Customer's Opt-In Approval**

- A. Each time a telecommunications company receives a customer's "Opt-In" approval to allow the telecommunications company to make CPNI available to itself, its affiliates, independent contractors or joint venture partners, the telecommunications company must confirm in writing the change in approval status to the customer within ten days.
- B. The written confirmation must be mailed or e-mailed to the customer.
- C. The confirmation must be separate from any other mail from the telecommunications company.
- D. The confirmation must clearly advise the customer of the effect of the customer's opt-in choice and must provide a reasonable method to notify the telecommunications company, including a toll free telephone number if the telecommunications company made an error in changing the customer's approval status.

**R14-2-2110. Reminders to Customers of Their Current CPNI Release Election**

- A. Telecommunications companies that have obtained opt-out or opt-in approval must notify customers of their current election regarding the treatment of their CPNI every twelve months.
1. In the case of opt-out approval, the notification must remind customers of their election to allow the company to:
    - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe; and
    - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services.
  2. In the case of opt-in approval, the notification must remind customers of their election to allow the company to:
    - a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
    - b. Provide their information to its joint venture partners and independent contractors that provide communications-related services; and
    - c. Provide their information to its affiliates that provide non-communications-related services.
  3. In the case of customer specified third party approval by written, oral, or electronic request, the notification must remind customers of their election to

allow the company to:

- a. Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
- b. Provide their information to its joint venture partners and independent contractors that provide communications-related services;
- c. Provide their information to its affiliates that provide non-communications-related services; and
- d. Provide their information to specifically identified third parties as requested in writing by the customer.

**B.** The notice must not be mailed with any advertising or promotional information.

**C.** The notice shall not be included with the customer's bill.

**R14-2-2111. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI**

Any approval of the use of CPNI received by a telecommunications carrier will remain in effect until the customer revokes, modifies, or limits such approval.

**14-2-2112. Severability**

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

## **ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

### **A. Economic, small business and consumer impact summary**

#### **1. Rulemaking.**

The new rules govern the treatment of Customer Proprietary Network Information ("CPNI") for all telecommunications companies that provide telecommunications service in Arizona. These rules are in addition to the Commission's adoption and incorporation of federal rules under 47 CFR § 64.2001 through 2009, revised as of September 20, 2002.

#### **2. Brief summary of the economic impact statement.**

The rules provide processes for exchange of customer information, depending upon the level of service subscribed to by the customer from the carrier, between the carrier, the carriers' affiliates and third parties and attempt to balance a carriers' First Amendment rights and consumers' privacy rights under the U.S. Constitution and the Arizona Constitution under Article 2, Section 8.

Costs of the rules would depend upon the process required to obtain a customer's informed consent to release his or her CPNI. The Arizona rules provide for an "opt-out" process, with a verification requirement within one year of receipt of customer implied approval, and an "opt-in" process, which requires customers to affirmatively consent to use of CPNI.

The primary benefits of the rules are to insure protection of Arizona citizens' rights to privacy as required in the Arizona Constitution, to further a significant state interest and to comply with the Federal Communications Commission's (FCC) Third Report and Order (FCC 02-214 Rel. July 25, 2002), 47 USC 222 and rules promulgated from remand in 47 CFR 64.2001 et seq.

The rules are deemed to be the least intrusive and least costly approach of achieving the purposes of protecting citizens' constitutional rights and commercial interests of telecommunications carriers.

#### **3. Name and address of agency employees to contact regarding this statement.**

Wil Shand and Maureen Scott, Esq. at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007.

**B. Economic, small business and consumer impact statement.**

**1. Identification of the rulemaking.**

The rules will be a new section under Title 14, Chapter 2 – Corporation Commission Fixed Utilities, will provide compliance with FCC regulations and will impose requirements to protect consumers in accordance with the Arizona Constitution.

**2. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking.**

All telecommunications service providers and subscribers in Arizona.

**3. Cost-benefit analysis.**

**a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rules.**

Costs of the rules will include the costs related to expanding the tasks involved in reviewing applications for CC&Ns and review of compliance measures. The specificity of these rules should reduce the number of customer and carrier-to-carrier complaints. Costs may include, in addition to review of applications and compliance reports, the costs of processing requests for waiver of the rules and the costs of any additional compliance and enforcement proceedings that may arise.

The benefits of the rules are assurances that consumers will be afforded safeguards to insure confidentiality of individual-specific information and provision of implementation rules in order to regulate carriers' and monitor compliance with federal and now state regulations.

**b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rules.**

Implementation of the rules should not result in any increased cost to any political subdivision. To the extent political subdivisions may be subscribers of telecommunications services in Arizona, the political subdivision will benefit by notice and opportunity to protect individual-specific information.

- c. **Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated affect on the revenues or payroll expenditure of employers who are subject to the rulemaking.**

Costs to telecommunications service providers would be incurred by providers complying with the federal regulations.

Costs to telecommunications service providers may include:

The costs associated with providing notice and opportunity for subscriber to exercise right to deny provision of customer proprietary information;

The costs associated with notification to all affected customers of the time period to "opt-out";

The costs associated with maintaining consent records of subscribers;

The costs associated with training personnel and monitoring marketing practices to insure appropriate handling of CPNI.

4. **Probable impacts on private and public employment in business, agencies, and political subdivision of this state directly affected by the rules.**

Private employment may be affected initially by implementation of the rules, however, the requirements for notice, opportunity, verification and record maintenance could be incorporated into policies and procedures when contacting individual subscribers. It is doubtful that public employment would be significantly affected.

5. **Probable impact of the rulemaking on small business.**

- a. **Identification of the small businesses subject to the rules.**

It is difficult to determine to what extent small businesses as defined under A.R.S. §41-1001 (19) will be affected by the rules. Costs would substantially increase if CPNI were subject to sharing with affiliates and joint venture partners, which may not affect a small business. Compliance may only require implementing the "opt-out" approach.

- b. **Administrative and other costs required for compliance with this rules.**

Costs to the Commission of the rules may likely include the costs related to expanding the tasks involved in reviewing CC&N applications by telecommunications service providers. Costs may include, in addition to



review of applications, the costs of processing requests for waiver of the rule and the costs of any additional compliance and enforcement proceedings that may arise.

Costs to telecommunications service providers may include: the costs associated with filing of a CC&N Application; the costs associated with notification to all customers; the costs associated with ensuring all personnel are adequately trained and records are appropriately maintained and costs associated with monitoring affiliates and joint venture partners for compliance.

**c. A description of the methods that the agency may use to reduce the impact on small businesses.**

The rules do not require any greater cost impact on small businesses than that required by the federal regulations. Cost impact on small businesses may be mitigated by request for a waiver of some of the Arizona requirements so long as customers' rights are not violated.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the rules.**

Consumers should not experience any material increase in costs associated with the proposed rules. Consumers will benefit by the safeguards implemented to protect confidential information.

**6. A statement of the probable effect on state revenues.**

The rules may result in an increase in state revenues if penalties are imposed on service providers for noncompliance.

**7. A description of any less intrusive or less costly alternative method of achieving the purpose of the rules.**

There is no less intrusive or less costly alternative method of achieving the purpose of the rules as costs would be incurred by providers to implement the federal regulations. There would be very little additional costs to implement these rules.

8. **If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.**

Some but not adequate data was available to comply with the requirements of subsection B, therefore, the probable impacts are explained in qualitative terms.

## CONCISE EXPLANATORY STATEMENT

This explanatory statement is provided to comply with the provisions of A.R.S. §41-1036.

### **I. CHANGES IN THE TEXT OF THE PROPOSED RULES FROM THAT CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE SECRETARY OF STATE EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULES**

Some clarifying language has been incorporated into the following sections in response to carrier comments. The clarifying modifications do not substantially change the rules as published in the *Register*, therefore no supplemental rulemaking is required.

#### **R14-2-2103(A)(1)**

Staff addressed Arizona Wireless Carriers, MCI and Sprint carrier concerns regarding specific reference to "Total Services Approach" and modified this section for clarity.

#### **Before:**

**A. A telecommunications carrier may, subject to opt-out approval or opt-in approval:**

**1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;**

#### **After:**

**A. A telecommunications carrier may, subject to obtaining opt-out approval or opt-in approval:**

**1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing to that customer communications-related services of a category to which the customer does not already**

~~subscribe to that customer~~, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors;

**R14-2-2105(A)(1)**

AT&T and Citizens raised issue of clarify for customers understanding of complex definitions. MCI and Sprint concurred. Staff agreed that the regulatory definition of CPNI may cause confusion to customers and proposed the following clarification language.

**Before:**

A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:

1. Include the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

**After:**

A. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must:

1. Include language the same as or substantially similar to the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;

## **II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE RULES**

### **R14-2-2101. Application of the Rule**

**Issue:** Qwest and Arizona Wireless Carriers contended, and MCI and Sprint concurred, that the rules should apply only to intrastate CPNI. Qwest argued that the Federal Communications Commission's ("FCC") Third Report and Order (FCC 02-214 Rel. July 25, 2002) ("FCC Order") preempts Staff's CPNI rules.

Staff contended that the rules apply to all CPNI gathered by telecommunications carriers that provide telecommunications service in Arizona. Staff stated that the Arizona rules incorporate the FCC rules, going beyond them in certain instances. Staff further noted that the FCC's Order allows states to go beyond federal standards for purposes of the release of CPNI in a particular state; therefore, the Arizona rules apply to all CPNI released in Arizona.

**Analysis:** The rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customers' concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules were narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules will place on the carriers.

**Resolution:** No change was necessary.

#### **R14-2-2102. Definitions**

##### **R14-2-2102(10)**

**Issue:** AT&T stated its understanding that telephone numbers are considered published unless the customer specifically requests that the telephone number not be published; thereby the authorization to publish is implied. AT&T was concerned that defining "published" as "authorized for voluntary disclosure by the individual identified in the listing" creates a substantive requirement that carriers seek express authorization in order to publish a customer's telephone number in directories.

**Analysis:** The term "published" appears only once outside of the definitions section. Specifically, R14-2-2105(A) provides that "A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 5. Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use." This rule is consistent with the practice of implied authorization to publish and establishes no substantive duty on the carriers.

**Resolution:** No change was required.

**R14-2-2103. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services**

**R14-2-2103(A)(1)**

**Issue:** Citizens stated that Staff's rules require opt-in or opt-out for marketing any telecommunications related services to a particular customer and contended that this conflicts with the FCC rules.

**Analysis:** See discussion of R14-2-2101, above.

**Resolution:** No change was necessary.

**R14-2-2103(D)**

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Citizens and Verizon objected to the requirement that carriers execute a proprietary agreement with any entity with whom the carrier shares CPNI. This requirement applies to affiliates that provide communications-related services. Carriers took the position that carrier affiliates share an interest in maintaining the customer relationship, and therefore misuse of CPNI by affiliates is not likely. These carriers further objected because Staff's rules require a proprietary agreement with joint ventures, independent contractors and affiliates, where the FCC rules require a confidentiality agreement only with the first two types of entities, and not with affiliates.

Staff stated that the carriers' assurances regarding affiliates' interest in maintaining the customer relationship is insufficient to ensure the protection of CPNI. Therefore, Staff stated, to the extent that

affiliates providing telecommunications services do not fall under the jurisdiction of the Corporation Commission, proprietary agreements are necessary to ensure that the CPNI disseminated to those entities remains confidential.

**Analysis:** It is axiomatic that CPNI is sensitive personal information. The Commission took the position that CPNI is sufficiently important to warrant the security of such proprietary agreements to ensure that customers' information is protected.

**Resolution:** No change was necessary.

**Issue:** Arizona Wireless Carriers, MCI and Sprint noted that the Total Services Approach was not explicitly set forth in the rules, and stated that the rules contradict the Total Services Approach because it requires opt-out or opt-in approval for the purpose of marketing communications-related services to a customer.

Staff stated its intention to use the Total Services Approach, and addressed this concern by recommending the following italicized language be added to R14-2-2103(A)(1);

A telecommunications carrier may, subject to opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing *to that customer* communications-related services of *a category to which the customer does not already subscribe to that customer*, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

An additional clarification was made to prevent confusion regarding when a telecommunications carrier may disclose CPNI subject to this rule. This clarification was addressed with the following italicized language added to R14-2-2103(A)(1):



A telecommunications carrier may, subject to *obtaining* opt-out approval or opt-in approval: 1. Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors.

**Analysis:** The Commission agreed with Staff. It believed that the clarifying language describing when CPNI may be disseminated was appropriate.

**Resolution:** The Commission adopted the changes set forth above in order to ensure that Arizona permits carriers to use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings to its customers among the categories of service to which a customer already subscribes and to require opt-in or opt-out approval to provide or market service offerings to customers among the categories of service to which the customer does not already subscribe.

**R14-2-2104. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates that Do Not Provide Communications-Related Services**

**R14-2-2104(D)**

**Issue:** MCI and Sprint concurred with Qwest's objection to the requirement that carriers secure express written customer consent before CPNI may be transferred to unaffiliated third parties.

**Analysis:** To the extent that third parties and affiliates that do not provide telecommunications services do not fall under the jurisdiction of the Corporation Commission, written consent is necessary to ensure that the CPNI disseminated to those entities remains confidential. The Commission believed that requiring express written customer consent prior to transferring CPNI to

unaffiliated third parties and affiliates that do not provide communications-related services is a reasonable method to ensure protection of that sensitive customer information.

**Resolution:** No change was necessary.

**R14-2-2105. Information Requirements for Customer CPNI Opt-In Notice**

**R14-2-2105(A)(1)**

**Issue:** AT&T and Citizens stated, and MCI and Sprint concurred, that the requirement that the notice contain the definition of CPNI contained in Section 222 of the Act would result in confusion for the customer. The carriers stated that the FCC requirement that the notification specify the type of information that constitutes CPNI permits the telecommunications carrier flexibility and aids in reader comprehension.

Staff agreed that the regulatory definition of CPNI may cause confusion to customers; therefore Staff recommended that the following italicized language be added to R14-2-2105(A)(1):

A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must: 1. Include *language the same as or substantially similar to* the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.

**Analysis:** Legal terminology may be overly complex and difficult to understand for the customer.

**Resolution:** The Commission agreed with and adopted Staff's recommended changes as set forth above to ensure that customers will receive an accurate but straightforward explanation of CPNI notice.

**R14-2-2105(A)(4)**

**Issue:** MCI and Sprint joined in Qwest's contention that the requirement that the notice inform the customer that CPNI includes "all information related to specific calls initiated or received by a customer" misstates existing law.

**Analysis:** CPNI is defined at 47 USC § 222(h)(1)(A) and (B), revised 1999, and at rule R14-2-2102(5), as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

R14-2-2105(A)(1) requires that customers are given notice of what information makes up CPNI with a more detailed statement. Although R14-2-2105(A)(4) does not state the definition verbatim, it does not misstate the existing definition in 47 USC § 222(h)(1)(A) and (B), revised in 1999.

**Resolution:** No change was necessary.

**R14-2-2105(A)(6)**

**Issue:** MCI and Sprint concurred in Qwest's objection to the language of this rule. Qwest preferred language such as that of the federal rules, that "[c]arriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI." 47 C.F.R. § 64.2008(c)(3).

**Analysis:** The language of Staff's rule requires that notification to obtain opt-in approval must "[i]nform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes." Carriers preferred the broader language they proffered; however, they failed to convince the Commission that their proposed language has a significant benefit versus Staff's language. The language proposed by the carriers allows for potential advisement of any consequence, relevant or not, that may result from lack of access to CPNI. Because CPNI is a sensitive and highly touted commodity, the Commission did not wish to inadvertently authorize carriers to provide disincentives for customers who choose not to opt-in or who choose to opt-out. Therefore, the Commission preferred Staff's language.

**Resolution:** No change was necessary.

**R14-2-2105(B)(1)**

**Issue:** Sprint, MCI and Citizens objected to the requirements of this section, R14-2-2105(B)(2), and R14-2-2105(C)(2) that written notices be mailed separately or as a bill insert within a clearly marked envelope, and that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

Staff contended that written and electronic notices sent to customers to obtain opt-in or opt-out approval must be clear and easy for customers to read. After consideration of industry comments on Staff's Second Draft Rules, Staff amended R14-2-2105(B)(1) to allow carriers to include written notices within customer bills. Staff maintained that if written notice is included as a bill insert, the envelopes should be clearly marked to inform customers that important privacy information is enclosed. Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that minimum requirements governing content and format of written or electronic notices ensure that customers have the opportunity to make informed decisions as to the dissemination of their CPNI.

**Analysis:** The Commission agreed with Staff.

**Resolution:** No change was necessary.

#### **R14-2-2105(B)(2)**

**Issue:** Qwest, Citizens, MCI and Sprint objected to the requirement of this section that written and electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rule.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

**Resolution:** No change was necessary.

#### **R14-2-2105(B)(3)**

**Issue:** Citizens, MCI and Sprint stated that the requirements of this section and R14-2-2105(C)(3) to print written or electronic notice in both English and Spanish unless the customer has previously expressed a preferred language is too inflexible. Citizens noted that the FCC rules

authorize carriers to translate written or electronic notices into a language appropriate to the specific customer, which may not be Spanish.

Responses to Staff's First and Second Data Requests indicated that many carriers provide notice only in English, provide notice only once to each customer with no follow-up and fail to clearly mark the notice. Staff stated that R14-2-2105(B)(3) and R14-2-2105(C)(3) afford the flexibility desired by carriers by providing for a previously-established preferred language of a customer without specifying that this language must be English or Spanish.

**Analysis:** Both English and Spanish are languages spoken with great frequency in Arizona. The requirement that notices be provided in both languages to customers is an appropriate baseline for the communities of Arizona to ensure understanding, and yet allows for customers whose primary language may be other than English or Spanish to request notice in their own language.

**Resolution:** No change was necessary.

#### **R14-2-2105(C)(2)**

**Issue:** Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in twelve-point or larger type. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(1).

**Resolution:** No change was necessary.

#### **R14-2-2105(C)(3)**

**Issue:** Citizens, MCI and Sprint objected to the requirement of this section that electronic notices be printed in both English and Spanish unless the customer has previously expressed a

preferred language in which case the notice may be written in that language alone. Carriers contended that this requirement is burdensome and goes beyond the FCC's rules.

**Analysis:** See discussion, *supra*, regarding R14-2-2105(B)(3).

**Resolution:** No change was necessary.

**R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI**

**Issue:** Qwest, Sprint, Arizona Wireless Carriers, MCI, Cox Arizona Telecom and Citizens objected to this section, claiming that it is an unconstitutional restriction on free speech.

Staff acknowledged that cases cited by the carriers have found that an opt-in approval process prior to the release of CPNI is unconstitutional in some cases. However, Staff stated that the rules are consistent with the FCC rules with respect to the approval mechanism required for release of a customer's CPNI. Staff noted that this section adds a verification requirement, which has not been the subject of judicial review. The rule gives carriers one year to verify a customer's CPNI release election and allows carriers to request additional time if verification is not accomplished within a year.

**Analysis:** The United States Supreme Court established a four-prong test on the constitutionality of regulating commercial speech in the matter of *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980). First it must be determined whether the expression in question is protected by the First Amendment; in this, a case of commercial speech, the expression must concern lawful activity and not be misleading, and second; whether the asserted governmental interest in regulating the commercial speech is substantial. If the answer to the first two prongs is affirmative, the third consideration is whether the regulation directly advances the governmental

interest asserted, and, fourth, it must be determined whether the regulation is narrowly tailored to serve that interest. *Id.* at 566.

Carriers and Staff disagreed whether the proposed CPNI rules infringe on carriers' First Amendment rights. Carriers asserted that the restriction on the use of CPNI is an infringement on their right to commercial speech and cited to *U.S. West v. the Federal Comm. Comm'n*, 182 F.3d 1224 (10<sup>th</sup> Cir. 1999). Staff argued that the CPNI restrictions amount only to regulation of carriers' methods of collecting and using CPNI, which Staff asserted does not limit carriers' communication or expressive activities toward a willing audience.

To the extent that the rules implicate First Amendment issues relating to carriers' abilities to communicate customer CPNI with affiliates or other third parties, The Commission agreed that they are engaging in commercial speech that is lawful and is not misleading. The Commission also believed that the dissemination of CPNI by a regulated entity implicates a substantial government interest in protecting the rights of ratepayers to control that dissemination.

Subscribing to some form of telecommunications service is inevitable in all but the narrowest of circumstances. What telecommunications carriers do with the CPNI of these customers, a valuable yet sensitive commodity, is then out of customers' control except through market influence and state regulation. Staff's CPNI rules amount to time, place, and manner restrictions. Staff cited several national consumer surveys by Harris Interactive showing that customers are concerned that "companies they patronize will provide their information to other companies without [their] permission" (Staff's Response Comments, filed Jan. 19, 2005, at 9 (citations omitted)) and that customers are taking responsibility for protecting their own privacy.



In this case, the CPNI rules were promulgated as a direct result of concern on the part of the Corporation Commission, and more importantly, on the part of customers, regarding a 2001 mailing by Qwest to its customers regarding use of their CPNI. This mailing led to a public firestorm of consumer phone calls and letters to the Corporation Commission from people concerned about the safeguarding of their CPNI. On January 16, 2002, the Commission held a Special Open Meeting specifically to address customer's concerns about this very issue. Many customers appeared and spoke before the Commission regarding their grave concerns regarding the release of their CPNI. Many stated their desire that the release of their CPNI should be their choice, rather than their telecommunications carrier's, to opt-in rather than be required to opt-out of sharing of their CPNI.

The rules directly advance the state's interest in protecting the customers' information and engaging the customer in an active and informed way in controlling how telecommunications carriers use and disseminate, or whether they disseminate, CPNI.

Staff's CPNI rules are narrowly tailored to serve the interests articulated above. The benefits of protecting customer information outweigh the comparatively minimal burden that the time, place and manner restrictions on commercial speech the rules place on the carriers.

In response to comments received from the Arizona Attorney General's Office, the Commission added standards for carriers to receive an extension of time under R14-2-2108(g) of the rules. This change is a nonsubstantial change since the Commission is merely clarifying an existing rule. The standards the Commission added are as follows:

**Resolution:**

- I. The Commission may grant an extension(s) of time to complete the verification process if the applicant demonstrates items 1 through 4 below:
1. The applicant has used its best efforts to obtain customer verification of their CPNI sharing preference. One means of demonstrating this would be for the applicant to show that it has achieved verification with respect to a minimum of one-third of its customers during the initial or extension period for which the company used the opt-out approval mechanism; and
  2. The applicant has contacted each of its customers (for whom it has used an opt-out approval mechanism) at least once in the first half of the verification period and at least once during the second half of the verification period (if it was unsuccessful in obtaining the customer's verification during its initial contact) to verify the customer's CPNI sharing preference; and
  3. To the extent practicable, one of the applicant's contacts to the customer should be by phone to the customer's primary residence or telephone number by a person speaking the customer's language preference (English or Spanish). If the customer is not there, it should allow, if technically feasible, the customer the option of responding via message return; and
  4. The applicant presents a plan for achieving verification for its remaining customers. In its plan, the applicant must demonstrate that the additional time it is requesting is no longer than is reasonably necessary to complete items 1 and 3 again for any customers it was unsuccessful in contacting during the initial verification period, and to complete any additional measures designed to ensure customer contact during the extension period.

**R14-2-2109. Confirming a Customer's Opt-In Approval**

**Issue:** Qwest, MCI and Sprint objected to the requirement that carriers provide a customer written confirmation within ten days of receiving that customer's opt-in approval. The written confirmation must be mailed or e-mailed separately, and carriers state that this requirement is unnecessary, burdensome and costly.

Staff stated that a customer's opt-in approval allows a carrier to use, disclose, or permit access to that customer's CPNI to third parties and affiliates that do not provide communications-related services, and which thereby do not fall under the jurisdiction of the Corporation Commission. Staff stated that a customer should have the opportunity to notify the carrier in the event that the customer's opt-in approval was unintended or erroneous.

**Analysis:** The Commission agreed with Staff that this requirement is necessary and find that the benefit of protecting a customer's choice on use of CPNI outweighs the burden and cost of the confirmation process.

**Resolution:** No change was necessary.

**R14-2-2110. Reminders to Customers of Their Current CPNI Release Election**

**Issue:** Qwest, MCI and Sprint objected to the requirement that carriers provide annual reminders to customers that have given opt-in or opt-out approval of their election regarding CPNI. The annual reminders must be mailed or e-mailed separately from the customer's bill and advertising or promotional information. Carriers argued that this requirement is unnecessary, burdensome and costly.

Staff stated that customers should be kept informed of their elections regarding the treatment of the CPNI, and annual reminders ensure that customers' ongoing approval continues to be knowing and informed.

**Analysis:** The Commission agreed with Staff. Customers may subscribe to services from more than one company. The annual reminder affords customers the opportunity to revise their CPNI election if they choose.

**Resolution:** No change was necessary.